IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2011

CORAM:

THE HONOURABLE MR.JUSTICE D. HARIPARANTHAMAN

Writ Petition No.2921 of 2006
(O.A.No.6876/2001)

Tmt.K.Geetha ... Petitioner

-Vs-

1. The Director of Municipal Administration,
Chepauk, Chennai-5.

2. The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai-45. ... Respondents

Writ petition under Article 226 of the Constitution of India praying this Honourable Court to issue a writ of mandamus directing the respondents to reinstate the petitioner and regularise the service of the petitioner with effect from the date of her initial appointment 1.4.1992 with all service and monetary benefits as per rules and Government orders.

For petitioner : Mr.S.Selvathirumurugan

For 1st Respondent : Mr.V.Subbiah
Special Govt. Pleader

For 2nd Respondent : Mr.C.Kalai Selvan

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ORDER

The petitioner was employed on daily wages in the Revenue Department from 1.4.1992 to 1995. Thereafter, from 1995 till 31.12.1997, she was employed as Section writer in the second respondent Municipality on daily rated basis as fixed by the District Collector under NRY scheme.

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2. After 31.12.1997, according to her, she applied for maternity leave, since she became pregnant. After delivery of the child, she approached the second respondent for employment on 1.4.1998, but the employment was refused. Hence the petitioner sent a legal notice dated 4.12.1999 seeking employment and regularisation as per G.O.125, Municipal Administration and Water Supply Department dated 27.5.1999. She also made representations dated 23.2.2000 and 25.6.2000 seeking for regularisation as per G.O.125, referred to above, since other NMR workers, who were working along with her, were regularised in service as per the aforesaid G.O.125. Since no reply was given, she filed O.A.No.6876 of 2001 praying for a direction to the respondents to reinstate her in service and to regularise her in service.

3.The petitioner has averred that the second respondent acted illegally in refusing to give employment to her when she reported to duty after giving birth to child. According to her, the action of the second respondent is opposed to the provisions of the Maternity Benefit Act, 1961 and also the decision of the Apex Court in MUNICIPAL CORPORATION OF DELHI v. FEMALE WORKERS (MUSTER ROLL) AND ANOTHER (2000) 3 SCC 224).

4. The second respondent has filed reply affidavit and also additional counter affidavit refuting the allegations of the petitioner.

5. According to the second respondent, the petitioner was employed as Section writer from September 1995 to December 1997 and she did not apply for maternity leave. It is also stated that the petitioner being casual labourer, she is not entitled to maternity leave. It is stated that the petitioner is not entitled to the benefit of G.O.125, Municipal Administration and Water Supply Department dated 27.5.1999, as she discontinued her employment after December, 1997.

6. Heard both sides.

7. While the petitioner has asserted that she was employed from 1.4.1992, the second respondent states that she was employed from September 1995. For the purpose of this case, whether she was employed on 1.4.1992 or from September 1995 are not relevant.

8. According to the petitioner, she was not able to attend duty due to her pregnancy after 31.12.1997. She has pleaded in this case categorically that she sent a notice dated 4.12.1999 through her counsel about the denial of employment after the delivery of the child. She sought for benefit under G.O.125 as others were regularised in service. But the second respondent has not dealt with the same either in the reply affidavit or in the additional counter affidavit.

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9. Furthermore, the petitioner has pleaded that she also made representations dated 23.2.2000 and 25.6.2000 to various Authorities including the second respondent claiming regularisation under G.O.125, wherein she stated that she was denied employment when she reported to duty after delivery of a child. The second respondent failed to deny the same in the reply affidavit as well as in the additional counter affidavit.

10. While nothing is stated in reply affidavit, in the additional counter affidavit, it is vaguely stated in para 6 that the petitioner did not apply for maternity leave and she went away from duty after December 1997. It is also stated in para 6 of the additional counter that she did not approach for re-posting after delivery. But in para 4 of the reply affidavit, the second respondent has stated that the petitioner is not entitled to maternity leave. Para 4 of the reply affidavit is extracted hereunder:-

> "4. It is submitted that the regular female employees of the Municipality are eligible for Maternity Leave as per fundamental rules to which the employees are governed as this is the casual labourer who was appointed under daily wages fixed every year by the District Collector, besides there is no specific Rule for the grant of Maternity leave to this Casual Labourers. Hence the claim for the sanction of Maternity Leave and re-employment does not arise."

11. From the aforesaid pleadings, I am of the view that the petitioner was not given maternity leave after 31.12.1997 and she was denied employment when she reported to duty after delivery of a child on 1.4.1998. As rightly contended by the learned counsel for the petitioner, the action of the second respondent is opposed to provisions of the Maternity Benefit Act, 1961. As per Section 5 (2) of the Maternity Benefit Act, 1961, the Act is applicable to women employees who have rendered service for more than 80 days preceding the date of expected delivery. The Act is applicable to daily wage employees also.

12. Even as per the second respondent, the petitioner served from September 1995 upto 31.12.1997. Thus the petitioner rendered service for more than 80 days when she sought for maternity leave. The petitioner is entitled to maternity leave under the Act for twelve weeks. There is also prohibition under Section 12 of the Maternity Benefit Act, 1961 for dismissing an employee for absence during pregnancy.

13. The Apex Court in the decision in MUNICIPAL CORPORATION OF DELHI v. FEMALE WORKERS (MUSTER ROLL) AND ANOTHER (2000) 3 SCC 224)

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has held that the Act is applicable not only to regular employees but also to casual employees and daily wage employees in para 27. Para 27 of the said decision of the Apex Court is extracted hereunder:-

> "27. The provisions of the Act which have been set out above would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other articles, specially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily-wage basis."

14. Furthermore, the Apex Court has held that maternity benefits shall be given to women employees as per Article 11 of "Convention on the Elimination of all Forms of Discrimination against Women" of the United Nations on 18.12.1979. The second respondent is bound to grant maternity leave to the petitioner. The relevant portions in Para Nos.37 and 38 of the aforesaid decision of the Apex Court are extracted hereunder:-

> "37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10.12.1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18.12.1979, the United Nations adopted the "Convention on the Elimination of all Forms of Discrimination against Women". Article 11 of the Convention provides as under:
>
> "Article 11
>
> 1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

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(a) the right to work as an inalienable right of all human beings:

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment:

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States/parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) *to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social alowances;*

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(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular, through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repeated or extended as necessary."

(emphasis supplied)

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between the Municipal Corporation of Delhi and the women employees (muster roll), and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961."

15. For the aforesaid reasons, I am of the view that the petitioner is entitled to reinstatement and the second respondent is not justified in refusing employment when she reported to duty on 1.4.1998.

16. The Government issued G.O.125, Municipal Administration and Water Supply Department dated 27.5.1999 regularising the service of daily wage employees who are in service on 1.10.1996 or on the date of issuance of G.O.125. According to the second respondent, the petitioner was not in service when G.O.125 was issued and therefore G.O.125 could not be applied to the case of the petitioner.

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17. I have already held that the petitioner is entitled to be reinstated in service and the action of the second respondent is not justified in refusing employment from 1.4.1998. In these circumstances, in my view, G.O.125 is applicable to the petitioner.

18. Hence, the writ petition is allowed and a direction is issued to the respondents to reinstate the petitioner and to regularise her services in terms of G.O.125, Municipal

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Administration and Water Supply Department dated 27.5.1999 with all monetary benefits. The respondents are directed to comply with the aforesaid exercise, within a period of eight weeks from the date of receipt of copy of this Order. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vks

Copy to:-

1. The Director of Municipal
Administration,
Chepauk, Chennai-5.

2. The Commissioner,
Tambaram Municipality,
Tambaram,
Chennai-45.

+1CC to The Government Pleader SR.77425

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